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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1940

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CITY OF INDIANAPOLIS, et al.,

*Petitioners.*

10-11

v.

THE CHASE NATIONAL BANK OF THE CITY  
OF NEW YORK, Trustee, etc., et al.,

Nos. ~~423-424~~

*Respondents.*

THE CHASE NATIONAL BANK OF THE CITY  
OF NEW YORK, Trustee, etc.,

*Petitioner.*

10-12

v.

CITIZENS GAS COMPANY OF INDIANAPOLIS,  
et al.,

Nos. ~~423-424~~

*Respondents.*

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BRIEF OF CITIZENS GAS COMPANY OF INDIANAPOLIS,  
RESPONDENT AND CROSS-RESPONDENT

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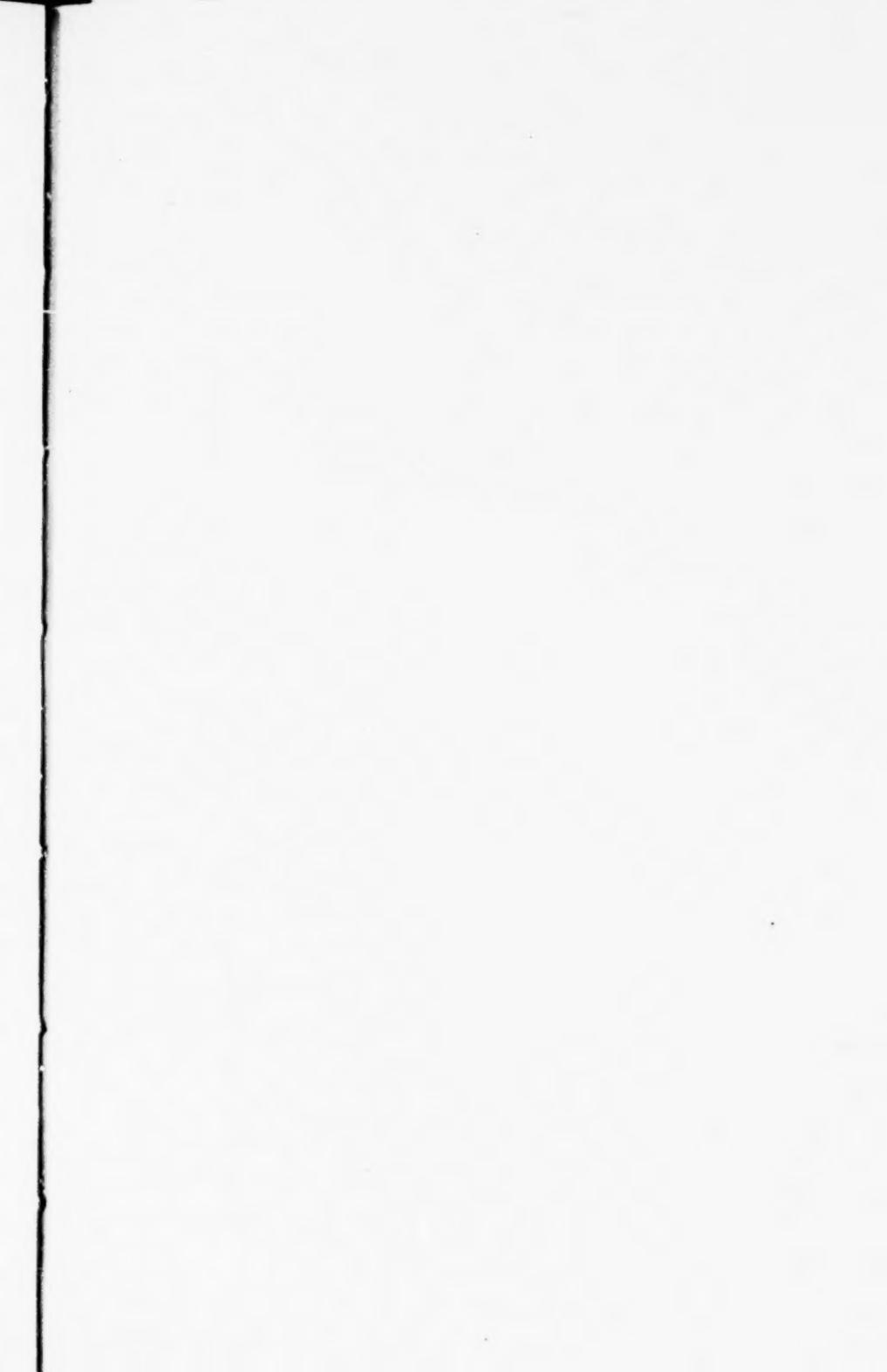
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## ABBREVIATIONS

The following abbreviations will be used in this brief:	
City of Indianapolis.....	"City"
The Chase National Bank of the City of New York, Trustee, when re- ferred to alone.....	"Chase"
Citizens Gas Company of Indianapolis	"Citizens Gas"
The Indianapolis Gas Company when referred to alone.....	"Indianapolis Gas"
When Chase, Citizens Gas and Indi- anapolis Gas are referred to col- lectively .....	"Respondents"
The Ninety-nine year lease of Sep- tember 30, 1913, between The Indi- anapolis Gas Company, Lessor, and Citizens Gas Company, Lessee	"Lease"

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CITY OF INDIANAPOLIS, et al.,

*Petitioners.*

v.

THE CHASE NATIONAL BANK OF THE CITY  
OF NEW YORK, Trustee, etc., et al.,

*Respondents.*

} Nos. 421-422

THE CHASE NATIONAL BANK OF THE CITY  
OF NEW YORK, Trustee, etc.,

*Petitioner.*

v.

CITIZENS GAS COMPANY OF INDIANAPOLIS,  
et al.,

*Respondents.*

} Nos. 423-424

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BRIEF OF CITIZENS GAS COMPANY OF INDIANAPOLIS,  
RESPONDENT AND CROSS-RESPONDENT

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THE OPINIONS BELOW

The District Court made findings of fact (III R. 1160) and conclusions of law (III R. 1190) and wrote an opinion (III R. 1122). The opinion has not been officially reported.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (IV R. 1281-1306) is reported in 113 F.

(2d) 217. Its opinion on the first appeal (H. R. 285-293) is reported in 96 F. (2d) 363; certiorari denied 305 U. S. 600.

## JURISDICTION

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229 (43 Stat. 938; 23 U. S. C. A. Sec. 347.)

Wrts of certiorari were granted in each of the cases by this Court on October 28, 1940.

## STATEMENT OF THE CASE

The facts relevant to the liability of Citizens Gas Company of Indianapolis may be summarized as follows:

(1) Citizens Gas was organized as a quasi-public corporation for the purpose of acting as the original Trustee of a Public Charitable Trust created for the benefit of the gas users of the City. (I. R. 246, 250.) The Franchise Ordinance and the Articles of Incorporation (I. R. 81) constituted the trust instruments and defined the powers and duties of Citizens Gas.

*Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (C. C. A. 7).

(2) Such trust instruments provided that upon satisfaction of the claims of stockholders, the property of Citizens Gas should be conveyed to the City subject to all the

legal obligations of the Company, and that thereafter Citizens Gas should be wound up (I R. 84, 85, 98, 115).

(3) During its trusteeship, Citizens Gas entered into the lease with Indianapolis Gas (I R. 51-80), pursuant to the authority granted by the statutes of the State of Indiana then in force. Upon joint petition of both parties the lease was approved by the Public Service Commission of the State of Indiana (I R. 116-122). It has been stipulated that the surrender of the franchise and the acceptance of an indeterminate permit under the Public Service Commission Law of Indiana did not have the effect of modifying or rendering nugatory the terms of the Franchise in so far as they created a Public Charitable Trust and defined the terms and conditions thereof and the rights, duties and liabilities of Citizens Gas as original Trustee, of the City as successor trustee, and of the inhabitants of the City as the beneficiaries of the trust (II R. 622).

(4) Section 29 of the lease limited the liability of Citizens Gas as follows:

“The Lessor and Lessee mutually covenant that they will each look for the carrying out of the obligations of this lease solely to the corporate assets and franchises of the other, and such assets shall not embrace any claim which might under any circumstances be enforceable in any way whatsoever against a stockholder, director or officer, under any statute or other law now or hereafter in force, or against a stockholder by reason of any insufficiency in the payment of capital stock. Any personal, statutory or other liability of any stockholder, director or officer of either the Lessor or the Lessee, whether such liability now exists or hereafter arise, being a part consideration for this lease is hereby expressly waived.” (I R. 78.)

(5) Citizens Gas continued in possession and operated the leased property until September 9, 1935, and fully performed the rental covenants of the lease (II R. 627-628).

(6) Prior to September 9, 1935, the claims of stockholders of Citizens Gas had been completely satisfied (II R. 634), and the authority and duty of Citizens Gas to convey and transfer all of its property to the City had been finally adjudicated (*Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (C. C. A. 7)).

(7) Thereupon, on September 9, 1935, Citizens Gas conveyed and transferred to the City all of its property subject to all outstanding obligations of the Company, and otherwise in strict accordance with the terms and conditions of the trust instruments (I R. 122, 127; III R. 833, 835). The City reserved its right to contest the validity of the lease (I R. 202-204, II R. 468). After September 9, 1935, Citizens Gas owned and held no property of any description and engaged in no business activity (II R. 466).

(8) In regard to claim of estoppel, reference may be made to pages 54 to 56, inclusive, of the "Brief of City of Indianapolis, et al., Petitioners and Cross-Respondents," for the facts upon which the District Court based its finding against Respondents upon that issue.

## ARGUMENT

Citizens Gas Company of Indianapolis conveyed and transferred all of its assets to the City of Indianapolis on September 9, 1935, in the execution of the public charitable trust. The lease in question provides (Section 29) that the liability of Citizens Gas thereunder shall be limited to the corporate assets and franchises (I R. 78). Since the validity of the Public Charitable Trust is admitted (I R. 233, 242, 246, 250), the primary controversy here is whether the assets now in the hands of the City of Indianapolis are liable under the lease for the remainder of the term of ninety-nine years.

Throughout this litigation Citizens Gas has adopted a completely neutral position with reference to that controversy. It affirms the validity of the Public Charitable Trust and asserts the complete performance of its obligations and duties as the original Trustee. On the other hand, it has never denied its power and authority to make the lease in question but has completely performed the lease covenants to the full extent of its legal capacity and authority (II R. 627-628).

The essential factors which define and determine the position of Citizens Gas are as follows:

(1) No party has questioned the validity of the Public Charitable Trust as created and defined in the Franchise Ordinance and the Charter of Citizens Gas (I R. 233, 242, 246, 250). This had been adjudicated prior to the conveyance to the City (*Todd v. Citizens Gas Company, et al.*, 46

Federal (2nd) 855 (C. C. A. 7); *Williams v. Citizens Gas Company, et al.*, 206 Indiana 448, 188 N. E. 212).

(2) The terms and conditions of the Public Charitable Trust defined the powers and duties of Citizens Gas. As stated by the Court in *Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (865) (C. C. A. 7): "Provisions for the protection of the public interests were properly included in its charter, and are binding upon its stockholders and directors, who must act in accordance therewith until they are legally abrogated or altered." It is clear that Citizens Gas was created solely to act as original Trustee of the Public Charitable Trust and that all of its corporate assets were trust assets.

(3) Both Indianapolis Gas and the purchasers of its bonds from Citizens Gas had full knowledge of the terms and conditions of the Public Charitable Trust and the obligation of Citizens Gas to convey all of its property to the City and thereafter wind up its affairs (I R. 62; II R. 583-586). Moreover, Indianapolis Gas was notified of the contemplated transfer and of the City's desire to contest the validity of the lease some time before the conveyance was made (III R. 836).

(4) Since Citizens Gas was a public utility as well as the original Trustee of the Public Charitable Trust, the lease in question was made pursuant to the authority of the Public Service Commission Law of Indiana and only after approval had been given by the Public Service Commission of Indiana (I R. 116-122). The propriety of this was adjudicated in *Williams v. Citizens Gas Company, et al.*, 206 Ind. 448, 188 N. E. 212.

(5) Prior to September 9, 1935, it had been adjudicated that neither the enactment of the Public Service Commis-

sion Law by the General Assembly of the State of Indiana nor the granting of an indeterminate permit thereunder to Citizens Gas had affected in any way the terms of the Franchise Ordinance in so far as they created the Public Charitable Trust and defined the terms and conditions thereof (*Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (C. C. A. 7)). Moreover, all the parties hereto have conceded that fact (H. R. 622).

(6) On September 9, 1935, after the complete satisfaction of the claims of stockholders of Citizens Gas, it conveyed all of its property of every kind to the City *subject* to the legal obligations of the Company. The conveyance and transfer was made in strict accordance with the provisions of the Franchise Ordinance and the Charter of Citizens Gas (I. R. 122, 127; III. R. 833, 835). Thus Citizens Gas completely carried out and performed its duties as Trustee of the Public Charitable Trust, and as provided in the Franchise Ordinance and its Charter (I. R. 84, 85, 98, 115), Citizens Gas had no further duty or obligation except to wind up its affairs.

Throughout its corporate existence Citizens Gas has acted within its authority and duty both as the original Trustee of the Public Charitable Trust and as a public utility. It affirms the validity and binding effect of the lease during the period during which it had the authority and the ability to operate as a public utility in the City of Indianapolis. Citizens Gas also affirms the validity and binding effect of the terms and conditions of the Public Charitable Trust. Whether or not the liability under the lease continues to be a charge upon the trust assets after their conveyance to the City of Indianapolis, it is clear that Citizens Gas has fully performed its duties and obliga-

tions and that its legal capacity and obligation to secure further performance of the lease covenants terminated on September 9, 1935.

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